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IN THE COURT OF APPEALS OF INDIANA

PAUL RUTAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A05-0605-CR-256
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0512-FD-2084

January 24, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Paul D. Rutan appeals his sentence for Battery,[1] a class D felony, and presents the following restated issue: Did the trial court err by failing to identify mitigators?

We affirm.

The facts favorable to the conviction are that, for approximately five years preceding the crime, Rutan, who was fifty-one years old when he committed the instant offense, lived with and cared for his eighty-two-year-old father. Rutan's father was feeble, suffering from, among other things, Parkinson's disease and dementia. On December 20, 2005, Rutan became angry with his father because his father refused to sit still. After Rutan's father stood up for a second time, Rutan applied pressure to his father's face and scolded him for disobeying his orders. As a result, Rutan's father was taken to the hospital and suffered severe bruising to his face. Subsequently, the State charged Rutan with, and he pleaded guilty to, battery as a class D felony. Following a hearing, the trial court sentenced Rutan to one and one-half years in prison with all but six months suspended. Rutan now appeals.

Rutan contends the trial court erred by failing to identify the following four mitigating circumstances: (1) his guilty plea; (2) his remorse; (3) his lack of criminal history; and (4) his poor physical health. Under Indiana's post-*Blakely* statutory scheme, the trial court may impose any sentence authorized by statute and permissible under the Indiana Constitution "*regardless of* the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code Ann. § 35-38-1-7.1(d) (West, PREMISE

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[1] Ind. Code Ann. § 35-42-2-1(a)(2) (West 2004).

through 2006 2nd Regular Sess.), *as amended by* P.L. 71-2005, Sec. 3 (emphasis supplied); *Creekmore v. State*, 853 N.E.2d 523, 531 (Ind. Ct. App. 2006), *trans. denied*. The trial court was statutorily authorized to impose Rutan's one and one-half-year sentence, which is the advisory sentence for a class D felony. Ind. Code Ann. § 35-50-2-7 (West, PREMISE through 2006 2nd Regular Sess.), *as amended by* P.L. 71-2005, Sec. 10. Further, under the new statutory scheme, any error in sentencing is harmless. *Creekmore v. State*, 853 N.E.2d 523. "Put simply, the new statutory scheme does not require the finding and balancing of aggravating and mitigating circumstances." *Id.* at 531; *see* I.C. § 35-38-1-7.1(d). We cannot say, therefore, the trial court abused its discretion. *See Creekmore v. State*, 853 N.E.2d 523 (under new, post-*Blakely* sentencing scheme, no abuse of discretion where trial court did not identify defendant's guilty plea as a substantial mitigating circumstance).

Nevertheless, pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence is inappropriate in light of the nature of the offense and the offender's character. *Reyes v. State*, 848 N.E.2d 1081 (Ind. 2006). Rutan provided testimony at the sentencing hearing detailing his treatment of his father on occasions prior to the date on which he committed the instant criminal act. The following are three excerpts that reveal Rutan's character:

> We, we put him down with uh usually with the straps that they come home from . . , because I was trying to keep him from getting up and walking because I didn't need him falling.

* * *

> [H]e would sit there and scream and holler . . , and holler out and I tried . . , I tried once to put the bandanna around [his mouth] to try to quiet him down you know so he wouldn't be screamin' and it didn't work. So we didn't do it no more. I mean we . . , it was just . . , it was flat open across his mouth.
>
> * * *
>
> I took [an] open hand and I would smack his hand and I would smack him on the, on the knee and I would say get those knees uncrossed cause what, what was happenin' was the same thing on there when he crossed his legs on there the blood . . , it was cuttin' the blood circulation off. He had the problem anyway. And then, and then on top of that after he would do that for a while, sometimes he would stand up and he'd fall.

Transcript at 17-18 (ellipses in original).

Despite Rutan's character, as revealed through his own account of past abuse, he argues his sentence is inappropriate for several reasons. Rutan points out that he has no prior criminal history and expressed remorse about his actions. Although lack of criminal history and remorse have value, they do not necessarily render one's sentence inappropriate, especially when the nature of one's crime is brutal. *Laux v. State*, 821 N.E.2d 816 (Ind. Ct. App. 2005). Such is the case here, where Rutan, then fifty-one years old, applied sufficient force to his eighty-two-year-old father's face to cause significant bruising. Furthermore, Rutan was his father's primary caretaker and attorney in fact, which rendered his father particularly vulnerable to Rutan's physical assault. *See Purvis v. State*, 829 N.E.2d 572 (Ind. Ct. App. 2005) (sentence appropriate when age of and relationship with victim made the victim particularly vulnerable), *trans. denied*, *cert. denied*. As a result of Rutan's actions, his feeble, elderly father required hospitalization. Thus, Rutan's lack of criminal history and remorse do not render his sentence

inappropriate. *See Laux v. State*, 821 N.E.2d 816 (defendant's sentence not inappropriate, despite lack of criminal history and remorse, in light of the brutality of the crime).

Rutan further suggests his sentence is inappropriate because he is in failing health. To this, we note Rutan's health was, apparently, not so poor that it prohibited him from battering his feeble, elderly father. Finally, Rutan correctly asserts he deserves mitigating weight for his guilty plea, from which he derived no benefit. *Francis v. State*, 817 N.E.2d 235 (Ind. 2004). When measured against the abusive relationship with his father and the nature of his crime, however, we cannot say Rutan's advisory sentence is inappropriate. *See id.* (presumptive sentence appropriate where guilty plea, which was a weighty mitigating factor, and other mitigating factors balanced the aggravating factors).

Judgment affirmed.

KIRSCH, C.J., and RILEY, J., concur.